

## MEMORANDUM

**TO:** The Water Quality Working Group  
**FROM:** Western Resource Advocates  
**SUBJECT:** Temporary and Limited Degradation Exception for Antidegradation Review  
**DATE:** April 13, 2011

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### **Issue**

Activities resulting in temporary and limited degradation of water quality are exempt for antidegradation review.

*See Utah Antidegradation Reviews: Implementation Guidance §3.3.3, 3.3.4, and 7.1 (May 2010).*

### **Proposal**

To eliminate “temporary and limited degradation of water quality” from “activities that are not considered to result in degradation or additional degradation,” §3.3.3, and implement antidegradation review requirements to all activities that may degrade the water quality, but with a tiered review process to address activities that may cause only temporary and limited degradation of water quality.

### **Reason for the Recommendation**

At a minimum, DWQ should apply some antidegradation review requirements to all activities, including those of a temporary and limited nature. **All** activities that may affect water quality should be carefully reviewed to determine if alternatives to allowing the degradation exist. *U.S. Environmental Protection Agency Region VIII Guidance: Antidegradation Implementation*, Page 5, August 1993. <http://www.epa.gov/region8/water/wqs/wqsdocs.html>.

If an applicant suggests that degradation from proposed discharge will be temporary and limited, DWQ should conduct a preliminary review and evaluation. If the preliminary review in fact demonstrates that degradation will only be temporary and limited, according to an objective set of criteria, then the review process ends. If it turns out, however, that the degradation would be longer in duration or more serious, then proceeding to a full antidegradation review would be required.

Federal regulations require antidegradation implementation based on three tiers of protection EPA Region VIII guidance on antidegradation provides the following for temporary and limited activities under each tier:

**Tier 3:** Maintain high quality waters that constitute an outstanding national resource (ONR).

Examples

- National and State Parks
- Wildlife Refuges
- Water of Exceptional Recreational Significance
- Water of Exceptional Ecological Significance

Temporary and Limited Effects Guidelines:

- Direct or upstream source with temporary or limited effects on ONR.
- Handled on case by case bases.
- Activities with duration less than one month and less than 5% change in ambient concentration will be deemed to have temporary and limited effects.
- Decisions based on the following factors:
  - o Length of time during which water quality will be lowered.
  - o Percent change in ambient concentrations.
  - o Parameters affected.
  - o Likelihood for long term water quality benefits to the segment.
  - o Degree to which achieving applicable water quality standards during the proposed activity may be at risk.
  - o Potential for any residual long-term influences on existing uses.

*Protection Agency Region VIII Guidance: Antidegradation Implementation*, Page 11, August 1993. <http://www.epa.gov/region8/water/wqs/wqsdocs.html>.

**Tier 2:** Protect existing water quality, where quality exceeds levels necessary to support propagation of fish, wildlife and recreation in and on the water.

Exception:

- The state finds that certain conditions are satisfied. Required finding is that allowing lower water quality is necessary because reasonable non-degrading or less-degrading alternatives are not available.

#### Significance Factors and General Guidelines

- DWQ will identify and eliminate from further review only those proposed activities that present insignificant threats to water quality.
- Activities that would lower the ambient quality of any parameter by more than 5% reduce the available assimilative capacity by more than 5% or increase pollution loadings to a segment by more than 5% will be presumed to pose significant degradation. Cumulative effects of multiple projects need to be evaluated to meet this standard.
- Significant changes to water quality should be determined through simple analyses that may be demonstrated by:
  - o Percent change in ambient concentrations.
  - o Difference, if any, between existing ambient quality and ambient quality that would exist if all point sources were discharging at permitted load rates.
  - o Percent change in loadings.
  - o Percent reduction in available assimilative capacity.
  - o Nature, persistence, and potential effects of the parameter.
  - o Potential for cumulative effects.
  - o Predicted impacts to aquatic biota.
  - o Degree of confidence in any modeling techniques utilized.
  - o Difference, if any between, permitted and existing effluent quality.

*Protection Agency Region VIII Guidance: Antidegradation Implementation*, Page 16, August 1993. <http://www.epa.gov/region8/water/wqs/wqsdocs.html>.

**Tier 1:** Maintain and protect existing in-stream water and the level of water quality necessary to protect such existing uses, whether or not such uses are included in the water quality standards. Tier 1 protection applies to all surface waters.

#### Guidelines

- Prior to authorizing any proposed activity, DWQ shall ensure that water quality sufficient to protect existing uses fully will be achieved.
- Applicant may be required to provide physical, chemical, or biological monitoring data or other information needed by DWQ to identify and protect existing uses.

*Protection Agency Region VIII Guidance: Antidegradation Implementation*, Page 24, August 1993. <http://www.epa.gov/region8/water/wqs/wqsdocs.html>.

Temporary and limited activities at a minimum should be reviewed and protected under the 3 tiers set forth in the Code of Federal Regulations and guidance provided by EPA Region VIII.

#### **Benefiting Parties**

##### Department of Water Quality (DWQ)

- A single standard leads to greater certainty in that standard.
- Permitting and enforcement actions would be simplified and straight-forward.
- Greater clarity means fewer legal challenges that would otherwise divert agency time and resources.

##### Industry

- Certainty and consistency in the standard and review requirements.
- Greater confidence that temporary and limited uses are accurate and insulated from legal challenge.